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KARUPIAH KARUPPAN

v.

MUNUSAMY THIRU VENGEDAM

HIGH COURT MALAYA, JOHOR BAHRU

MAHADEV SHANKAR J

b

[CIVIL APPEAL NO. 21 OF 1980]

16 NOVEMBER 1983

LANDLORD AND TENANT: *Claim for possession - Bona fide question of title - Whether Magistrate had jurisdiction to hear case - What evidence Magistrate can take into account.*

This is an application before the Court to decide whether:

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i) the Magistrate had jurisdiction under the Subordinate Courts Act 1978 to determine a *bona fide* question of title;

ii) the Magistrate was entitled not only to look into pleadings alone but also at the proceedings as a whole.

d

The appellant was the occupant of a house built on a piece of land since 1950. The respondent filed an action claiming to be owner of the said house and land. Notice to quit was served on appellant and claiming for delivery of vacant possession. At the trial before the Magistrate's Court, the Magistrate by looking at the pleadings and the proceedings as a whole held that the respondent being the registered proprietor of the property enjoyed indefeasibility of title. Respondent was given vacant possession of the property. The appellant appealed.

*e***Held:**

[1] The Magistrate had jurisdiction to hear this case as there was material upon which the Magistrate could hold whether there was a *bona fide* question of title involved.

[2] In so deciding the question before him, the Magistrate was entitled not only to look at the pleadings alone but also at the proceedings as a whole.

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[*Appeal dismissed with costs.*]

Case referred to:

Hiew Kim Swee v. G.C. Gomez [1955] 21 MLJ 170

Legislation referred to:*g*

Subordinate Courts Act 1948, ss. 69, 70, 71, 93

For the appellant - Dass; M/s. Wong & Dass

For the respondent - Bala; M/s. Bala & Co.

JUDGMENT

*h***M. Shankar J:**

The appellant in this case is the occupant of the premises known as No. 238, Paloh New Village, Paloh (hereafter referred to as the said house) situated on the land comprised in the issue document of title No H.S. (M) L: 81; P.T. Lot 387 situated in the Mukim of Paloh State of Johore. The land is hereafter referred to as the said land and the title as the said title.

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There was an action for possession of the said house and said land which the respondent had filed in the Sessions Court at Kluang.

Eventually that case was decided by the Magistrate at Kluang in 1983. Judgment was given for the plaintiff and the defendant now appeals against the whole of the decision on a variety of grounds.

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To say the least, it is more than somewhat surprising that an action filed in March 1974 was only heard in July 1980. From the record it appears that numerous adjournments were granted year after year on a variety of grounds which does little credit to all parties involved. The case should have been got out of the way a long time ago.

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Be that as it may, the delay in the disposal of this action was not one of the issues in this appeal. It can only be piously hoped that there will be no further repetition of this sort in the Courts below.

When the plaintiff first filed his action in January 1974, he did so in the Sessions Court at Kluang. He Claimed to be the owner of the said land and the said house thereon. He had served the notice to quit on the defendant who he claimed was in illegal occupation of the said house and the said land. An order of delivery for vacant possession and costs were prayed for.

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The defence was filed in March 1974. Briefly the defence was that the defendant was in possession of the said land and house since 1950, that when the plaintiff acquired title it was agreed between them that the defendant would be allowed to occupy the house until his death in addition to the payment of certain monthly sums (which were not specified), that the defendant had an equity in the land by virtue of some improvements rendered to the said house, that the notice to quit was unlawful and that the defendant was also protected by the Control of Rent Act 1966.

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In July 1974, the statement of claim was amended to allege that the defendant had sold the land to the plaintiff with vacant possession and that the transfer had been registered on the 17 April 1972. It was further averred that the premises were not subject to the Rent Control Ordinance.

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In March 1976, the defence was amended to add that the transfer was a fraud since it was misrepresented to the defendant that he was merely signing an IOU chit. No particulars were given of this fraud which remained a bare allegation at the trial.

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A counter-claim was also included by way of amendment for an order that the property be restored to the defendant.

In May 1976 a reply was filed joining issue.

All this while the defendant had solicitors representing him who should have been perfectly aware of the requirements of the rules of pleading and the questionable wisdom of raising defences which did not appear to have any basis in fact or in law.

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In 1978 the Subordinate Courts Act was amended and the jurisdiction of the Subordinate Courts was substantially increased. The position in Kluang was that the Sessions Court and Magistrates Courts were both carried on in the same premises.

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In the light of the enhanced jurisdiction of the Magistrates' Courts, this particular case was assigned a new number namely Civil Action No. 233/78.

Thereafter the Magistrate dealt with the case. He heard the evidence on 10 July 1980. The case for the plaintiff was that he had paid RM2,000 for this property which he purchased from the defendant in 1970 and had the transfer registered in 1972. By way of proof he

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- a** produced the issue document of title which showed him as the registered proprietor. His efforts to get the defendant to vacate were abortive and he filed the action to get vacant possession.
- The defendant by this stage was unrepresented. His defence was that the plaintiff had cheated him. He had merely taken a loan of RM800 for which he had signed an IOU Chit. He claimed
- b** also that he had been paying quit rents on the said house but it was pointed out that these payments were in fact made to the local council for some kind of assessment on the said house only. The various other allegations made in statement of defence were not supported by the defendant's evidence either as alleged or at all. The evidence as to the alleged fraud was also so skimpy that the Learned Magistrate felt obliged in his judgment to dismiss it out of hand and to give judgment for the plaintiff.
- c** The main ground urged by Mr. Dass for the appellant was that since there was a *bona fide* question of title involved the Court below had no jurisdiction to hear this case and that order of the Learned Magistrate was therefore a nullity.
- An argument in depth followed on the scope of ss. 69, 70, 71 and 93 of the Subordinate Courts Act (1948) Revised Act 92.
- d** Mr. Dass also cited *Hiew Kim Swee v. G.C. Gomez* [1955] 21 MLJ p. 170 and a number of other English authorities.
- I do not propose to deal with the English authorities in detail. That task was already undertaken by Thomson J (as he then was) in the case aforesaid and no useful purpose will be served in going over the same ground all over again.
- e** The issue as to jurisdiction was really quite simple. Was there material upon which the learned Magistrate could hold that there was no *bona fide* question of title involved in this case?
- Thomson J had already decided in the case just quoted that in coming to an opinion on this issue, the Magistrate was entitled not only to look at the pleadings alone but also at the proceedings as a whole.
- f** Here was a case where the plaintiff had produced the issue document of title showing that the property had been transferred into his own name. The plaintiff accordingly was the registered proprietor and his title was indefeasible.
- To challenge that position the defendant had to advance substantial grounds to show that he had a serious case to be tried on the issue as to whether the plaintiff had legally acquired the land. Notwithstanding the assistance he had from his legal advisors who drafted the
- g** pleadings, and the undoubted sympathy of the Court below the defendant was totally unable to produce any evidence which merited serious consideration on this aspect of the case.
- Accordingly it is the opinion of this Court that the Magistrate was quite entitled to hold on the pleadings and the evidence before him that there was no *bona fide* question of title involved and that accordingly it was in order for him to direct that the plaintiff be given
- h** recovery of possession of the said land and the said house.
- In my view his order to that effect was perfectly proper and this appeal must therefore be dismissed with costs.
- In his most persuasive manner Mr. Dass has sought to convince me that in all the circumstances of this case, I should not make such an order. After all the defendant was
- i** illiterate, and at the hearing he was unrepresented. He could not be blamed if he did not

plead and argue his case to the standards the law might require to sustain a defence of this kind. Whilst all that may well be so, the cruel fact remains that this Court can only go by what is on the record. The defendant had 6 years and more to put his case in proper order and I am not prepared to hold that he did not have a fair opportunity of defending this claim properly.

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It was further pointed out to me that there is pending in another action pending in this High Court filed by the appellant claiming for a declaration that he, the appellant, is the beneficial owner of the said house and the said land and for consequential relief on a variety of grounds, some of which may well be an elaboration of the allegations of fraud which were made in the Court below.

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I do not wish in any way to pre-judge the position of the appellant in that suit and would advisedly therefore avoid making any comment on the merits of that action.

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Suffice it to say that s. 70(4) of the Subordinate Courts Act contains a specific proviso that the recovery of possession under that section shall be no bar to the institution of an action in the High Court to try the question of title to the said land.

Relying on that proviso, the appellant has indeed filed a case which will in due course be decided on the merits.

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In view of the dismissal of this appeal however the plaintiff must have his order of possession. The defendant must vacate and the plaintiff will also have his costs both here and in the Court below.

Between the filing of the plaintiff's action and the date of this judgment a full 10 years has elapsed. No one would disagree that this is an undesirable situation. Whilst the defendant may in the meantime have reaped the benefit of the law's delays, I can only reiterate the hope that all parties concerned will make a concerted effort to prevent this kind of situation recurring in our Courts.

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Also found at [1984] 1 CLJ 368

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